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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking
Proceeding to Consider Rules to Implement
the Broadband Equity, Access, and
Deployment Program.

R. 23-02-016

**OPENING COMMENTS OF THE CORPORATION FOR EDUCATION NETWORK
INITIATIVES IN CALIFORNIA (CENIC) TO THE ORDER INSTITUTING
RULEMAKING 23-02-016**

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April 17, 2023

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I. Introduction

The Corporation for Education Network Initiatives in California (“CENIC”) respectfully submits these opening comments in the California Public Utilities Commission’s (“Commission” or “CPUC”), Order to Institute Rulemaking (“OIR”) regarding rules to implement the Broadband Equity, Access, and Deployment (“BEAD”) program. The rulemaking seeks to determine grant funding, eligibility, and compliance for funds distributed to California under the federal BEAD program that was created by the Infrastructure Investment and Jobs Act of 2021 (“IIJA”). CENIC has a long history of working on broadband deployment projects and focusing on access and equity for its 12,000 institutional constituents. The non-profit runs several networks: the California Research and Education Network (“CalREN”) connecting education, research, library, health care, scientific and cultural organizations throughout California; the Western Regional Network,

connecting research organizations in most of the Western States and Hawai'i; Pacific Wave, an international peering fabric connecting the US research community with data, instruments, and research collaborations in Oceania and the Asia Pacific Region; and, formerly, National Lambda Rail, a national footprint network, privately owned, connecting a range of medical and scientific research partnerships throughout the US. As such, CENIC offers the following opening comments to some of the questions posed in the OIR.

II. Discussion

A. Match Requirement

The IIJA calls for matching funds to be not less than 25 percent of project costs. The OIR notes that the IIJA expressly provides that matching funds for BEAD may come from a variety of other fund sources such as the Families First Coronavirus Response Act, the CARES Act, the Consolidated Appropriations Act of 2021, or the American Rescue Plan Act of 2021. In addition to these fund sources, CENIC would recommend that any state funds appropriated for the purposes of deploying broadband or other broadband-related funding, which includes, but not limited to, the California Advanced Services Funds (“CASF”) and its sub-accounts such as the Broadband Infrastructure Grant Accounts, the Federal Funding Account, and Loan Loss Reserve, be allowed as matching funds to meet the 25% matching requirement. Similar to the American Recovery and Reinvestment Act of 2009 (ARRA) program, broadband projects were required to provide matching grant funds of 20% either from the grantee themselves or from existing state funds. At that time, California made changes to existing law in order to allow all ARRA-eligible entities to be able to access the CASF program for matching funds.¹ Given these historic dollars and a greater understanding of the importance of broadband access, unserved locations persist,

¹ See Assembly Bill 1555 (Chapter No. 24, Statutes of 2009)

and the state should consider allowing all available state funds to be used for the 25% match to once and for all connect the unserved locations.

B. Statewide Middle Mile

With respect to Question 8 of the OIR, the Commission poses questions around whether subgrantees projects that plan to utilize the statewide middle-mile network should be prioritized. We recognize that last-mile providers and their projects are important to the business case for the statewide middle-mile network, and at the same time, know that there are many areas of the state that are still lacking broadband access at all. Further, given that the statewide middle-mile network is intended primarily to follow the state highway system to reduce costs and provide for faster construction, there are areas of the state that will need sub-regional middle-mile to be built for last-mile projects to connect to the statewide middle-mile network. To balance these dynamics, the CPUC could provide bonus points to those projects that intend to use the statewide middle-mile network. While a project may not initially connect to the statewide middle-mile network that does not mean it wouldn't in the future. Finally, it would be beneficial for the Commission to make it clear in the program rules that an allowable use of these funds would be to cover the cost of connecting to the statewide middle-mile network for any last-mile project.

As we have stated before, communities without access to high-speed broadband are faced with a variety of challenges that have made the business case long-suffering, and these public resources can significantly shift these dynamics. As such, at the forefront of this work should be on prioritizing the needs of California's most disenfranchised communities – including those in urban, rural, and tribal areas – and should drive the state's investments for the last-mile.

Further, in support of creating resilient networks, the CPUC could provide bonus points for those projects that propose to close the spurs that currently exist on the 10,000-mile state

network design map.² For example, on State Highway Route 4, the network dead ends in Arnold, California, although the route continues further east. In this example, bonus points could go towards a project that proposes to continue the eastern route along Highway 4 through the Sierra Nevada to Highway 89.

The CPUC also asks whether an applicant whose project significantly overlaps with the statewide middle-mile network should consult with the California Department of Technology (“CDT”). First, CENIC believes that greater clarification is needed to define what constitutes the term “significantly overlaps”? Without a greater understanding of what the CPUC considers triggering this requirement, it is challenging to weigh in on the question. Would a construction project that is occurring along the same state highway route, but on the opposite side of the roadway, fall under this requirement? Second, we would suggest that should projects be determined to need to consult with CDT that the third-party administrator be included as well as it is tasked with managing the development, acquisition, construction, maintenance, and operation of a statewide open-access middle-mile broadband network, including the creation of rural exchange points, under the oversight of CDT. The consultation process should be time-limited so that projects can move forward. We recommend a time period for the consultation of 10 business days to a maximum of one month’s time.

C. Grant Conditions, Applications, and Payments

Regarding the question around grant conditions, applications, and payments, CENIC would offer that the CPUC should ensure as much similarity to the existing requirements of the CASF program. This would support applicants by having consistency in project development and is consistent with the recommendation above to allow for matching funds to come from currently

² See <https://experience.arcgis.com/experience/e2540ace2ac248ee8c3350aa39395342>

administered CPUC grant programs. Of note, this would be similar to a process that the California Department of Housing and Community Development has undertaken to make their affordable housing program funds “accessible to more developers and communities, more equitable in serving the lowest-income Californians, and more targeted toward achieving better outcomes in health, climate, and household stability.”³ There is a lot of similarities between the housing developer community, which includes both for-profit and non-profit entities as well as acquisition, rehabilitation, and new construction projects, and those who deploy broadband networks, as both need more than just the capital resources to build the housing development (or network), but the skills and ability to maintain and operate the project upon completion. Their operations and maintenance plan – in the case of broadband networks, would detail the network elements to be in place for supporting customer traffic, the staffing and back office support needs for all key functional areas including a network operations center, the repair and maintenance response protocols, and the network upgrade and replacement process, to name a few – contain important elements to ensuring that a last-mile project will be successful for the customers it intends to serve. Successful grantees would have the experience, or demonstrate the ability to, successfully navigate the operations and maintenance required to operate a broadband network. Nonetheless, minimizing variations among programs attempting to achieve the same goals, the less challenging it is for potential applicants.

III. Conclusion

CENIC is grateful to have the opportunity to provide these opening comments in the Order Instituting Rulemaking focused on grant funding, eligibility and compliance under the Broadband Equity, Access, and Deployment Program. CENIC remains committed to achieving broadband digital equity for all Californians, ending the digital divide, and ensuring robust broadband

connectivity can be achieved for CENIC members and their patrons, students, staff, and faculty simultaneously.

Respectfully submitted,

/s/ Louis Fox

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